

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH**

MONDAY, THE 25TH SEPTEMBER 2006 / 3RD ASWINA 1928

ST.Rev..No. 543 of 2004()

TA.10/1998 of S.T.A.T.ADDL.BENCH,TVM. DT.11.3.2003

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REVISION PETITIONER/RESPONDENT/REVENUE:

**STATE OF KERALA, REP. BY THE DEPUTY
COMMISSIONER(LAW), COMMERCIAL TAXES, ERNAKULAM.**

BY GOVERNMENT PLEADER SRI.V.V.ASOKAN

RESPONDENTS: APPELLANT/ASSESSEE:

**SMR.PRASANNA VIJAYARAGHAVAN,
H.NO.406, WARD NO.IV, KADAKAMPALLY,
THIRUVANANTHAPURAM.**

**BY ADV. SRI.P.R.JAYAKRISHNAN
SRI.BIJU MANOHAR**

**THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD
ON 25/09/2006, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

C.R.

C.N.RAMACHANDRAN NAIR & K.M.JOSEPH, JJ.

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S.T.R.V. No.543 of 2004

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Dated this the 25th day of September, 2006.

JUDGMENT

Ramachandran Nair, J.

The question raised in the revision case filed by the State is whether the Agricultural Income Tax Appellate Tribunal was justified in holding that the revised AIT assessment completed in the respondent-assessee's case for the assessment year 1986-87 on 14.9.1996 is time barred. The assessee did not file return for the relevant assessment year and the officer did not issue any notice proposing assessment of escaped income under Section 35 of the AIT Act, 1950 until it was repealed and substituted by the AIT Act, 1991. Notice for the first time was issued purportedly under Section 41(1) of the new Act on 9.8.1996 against which assessee filed return. Even though objection was raised against completion of assessment beyond time limit, the Assessing Officer overruled the same on the ground that 10 years time is available to him to complete assessment of escaped income under Section 41(1) of the new AIT Act. If limitation under Section 41(1) is available in this case, then of course the assessment is valid. On the other hand, if the limitation under Section of the old Act is applicable, then of course the assessment or even the proposal for assessment are time barred. The Tribunal though accepted the departmental stand that Section 41(1) applies to the

respondent-assessee's case, still allowed the appeal holding the assessment is time barred on the ground that limitation has to be computed from the end of the previous year as according to the Tribunal, financial year referred to in Section 35 of the old Act is the previous year. Even though we do not approve the Tribunal's order that limitation has to be reckoned from the end the previous year and not from the end of the assessment year, we are inclined to uphold the order of the Tribunal on grounds of limitation, though for different reason. The new Act came into force on 1.4.1991 and as on that date no assessment or proceeding was pending against the respondent-assessee in respect of the relevant assessment year i.e.1986/87. Section 99(3) of the new Act however entitles the Department to complete any proceeding pending on the commencement of the new Act regarding assessment, levy, collection and recovery of tax chargeable under the old Act including that of escaped agricultural income. Since the consequence of repeal are fully provided in Section 99, the said Section is extracted hereunder.

"99. Repeal and Saving:- (1) The Agricultural Income Tax Act, 1950(Act XXII of 1950) is hereby repealed:

Provided that such repeal shall not affect the previous operation of the said Act or any right, title, obligation or liability already acquired, accrued or incurred thereunder, and subject thereto, anything done or any action taken, including any appointment, notification, notice, order, rule, form or regulation, certificate, licence or permit in the exercise of any power conferred by or under the said Act, shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act, as if this Act were in force on the date on which such thing was done or action was taken and all arrears of tax and other amounts

due at the commencement of this Act may be recovered, as if they had accrued under this Act and any reference in the said Act to an Officer, Authority, Tribunal or Court shall be construed as reference to the corresponding Officer, Authority, Tribunal or Court appointed or constituted under this Act, and if any doubt arises as to who is such corresponding Officer, authority, Tribunal or Court, the decision of the Government thereon shall be final.

(2) Notwithstanding anything contained in sub-section(1) any application, appeal, revision or other proceeding made or preferred to any officer or authority under the said Act, and pending at the commencement of this Act, shall, after such commencement, stand transferred to and be disposed of by the officer or authority who would have had jurisdiction to entertain such application, appeal, revision or other proceeding under this Act, as if it had been in force on the date on which such application, appeal or revision or other proceeding was made or preferred.

(3) Nothing contained in sub-section(1) shall affect the right to initiate and complete any proceedings pending on the commencement of this Act regarding the assessment, levy, collection and recovery of the tax chargeable under the said Act including that of escaped agricultural income or affect the liability of any person to pay any sum due from him or any existing right of refund under the said Act.

(4) Notwithstanding such repeal of the Agricultural Income Tax Act, 1950 (Act XXII of 1950), any proceedings pending before any Agricultural Income Tax Authority, Appellate Tribunal or High Court at the commencement of this Act, shall be continued and finally decided or determined under the provisions of that Act.

(5) Any arrears of tax or other amount pending any any recovery proceedings initiated or continued shall be continued as if the levy, collection and recovery are made or is continuing under the provisions of this Act and provisions of this Act relating to penalty and interest shall apply to such arrears of tax, or other amount which are in arrears at the commencement of this Act."

2. It is obvious from the proviso to sub-clause(1) of the above Section that

any right, title, obligation or liability already acquired, accrued or incurred under the old Act will remain unaffected even after repeal. Similarly any action taken including any notice, order, Rule, or certificate issued under the old Act shall be deemed to have been done or taken in exercise of powers conferred under the new Act. Clause (2) retains the authority of departmental officers to continue proceedings pending under the old Act as if those are proceedings under the new Act. Clause (3) of the new Act retains the provisions of the repealed Act for the purpose of assessment, collection and recovery of tax including that of escaped agricultural income. In other words, not only a pending assessment can be completed under the provisions of the old Act, but even completed assessment can be reopened for the purpose of assessment of escaped agricultural income by resort to provisions of the repealed Act. In fact, the officer gets power in this case under Clause (3) to make an income escaping assessment under the old Act. Section 35 of the old Act provides for only five years time from the end of the assessment year to complete an income escaping assessment. Therefore, an escaped assessment for the year 1986-87 in petitioner's case could be completed upto 31.3.1992. Sub-section (3) of Section 99 does not extend the period of limitation available under Section 99 and Section 41(1) of the new Act in respect of assessments for any assessment year prior to the commencement of the new Act. In fact Section 41(1) provides for assessment of income assessable under the new Act and not income pertaining to any period prior to the commencement of new

Act which could be assessed only under Section 99(3) of the new Act and by virtue of its operation, the limitation under the old Act applies. Since the escaped assessment in petitioner's case was not completed before 31.3.1992 in terms of Section 35 of the old Act, the assessment is time barred and consequently illegal and unenforceable. Even though Special Government Pleader contended that by virtue of proviso to Section 99(1) of the 1991 Act the provisions of the said Act apply for assessment completed under the old Act, we do not find any such provision in the said proviso which as already stated, only validates what is done under the old Act. We, therefore, uphold the order of the Tribunal holding that the petitioner's assessment for 1986-87 is time barred, but for different reason stated above.

C.N.RAMACHANDRAN NAIR
Judge

K.M.JOSEPH
Judge

pms

C.N.RAMACHANDRAN NAIR &
K.M.JOSEH, JJ.

T.R.C. No. of 200

JUDGMENT

Dated